

Purolator Courier Corp. and Local 851, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Cases 29-RC-5570, 29-RC-5571, 29-RC-5572, and 29-RC-5573

March 7, 1983

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS
ZIMMERMAN AND HUNTER

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Administrative Law Judge Steven Fish.¹ The Administrative Law Judge then transferred the above-captioned cases to the Board for decision. Thereafter, the Employer and the Petitioner filed briefs with the Board.²

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board, having duly considered the Administrative Law Judge's rulings made at the hearing, finds they are free of prejudicial error. The rulings are hereby affirmed.

Upon the entire record in this proceeding, including the briefs, the Board finds:

1. The parties stipulated and we find that the Employer, a Delaware corporation with facilities in Long Island City, Plainview, and Elmsford, New York, and Westwood, New Jersey, as well as other facilities throughout the United States, is in the business of providing delivery and pickup services for banks, lending institutions, state and Federal governmental agencies, health care institutions, supermarkets, and other customers. The parties further stipulated that between October 17, 1980, and October 16, 1981, a representative 12-month period, the Employer, in the course and conduct of its business, provided services valued in excess of \$50,000 directly to customers located outside the State of New York. The parties stipulated, and we find, that the Employer is engaged in commerce within the meaning of the Act. We further find that it will effectuate the policies of the Act to assert jurisdiction herein.

¹ The Regional Director for Region 29 consolidated these cases with Case 29-CP-453 for hearing before an administrative law judge. Following the close of the hearing, the Administrative Law Judge severed the above-captioned cases from Case 29-CP-453.

² We hereby grant the motion by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America for leave to file a brief *amicus curiae* and have considered the brief submitted therewith. The Petitioner has requested oral argument. This request is hereby denied as the record, the exceptions, and the briefs adequately present the issues and the positions of the parties.

2. The parties stipulated, and we find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act, and we find that the labor organization involved claims to represent certain employees of the Employer.

3. The Employer contends that the petitions for a unit of sorters, mechanics, utility employees, drivers (hereinafter courier-guards), and walkers fail to raise a question concerning representation because all of the employees in the petitioned-for unit are guards within the meaning of Section 9(b)(3) of the Act,³ and because Section 9(b)(3) prohibits the Board from certifying as a bargaining representative for guards, any union which, like the Petitioner, admits to membership employees other than guards. The Petitioner concedes that it admits nonguard employees to membership but disputes the Employer's position regarding the guard status of the employees sought. The Petitioner also states that it is prepared to proceed to an election in any unit which the Board finds appropriate.

The Board has considered twice, recently, the guard status of the Employer's courier-guards in other divisions of its nationwide delivery system. In *Purolator Courier Corp.*, 254 NLRB 599 (1981), the Board found that the courier-guards employed in the Employer's Texas-Oklahoma region were statutory guards. The petitioning union in *Purolator Courier Corp.*, 265 NLRB 659 (1982), attempted to distinguish the earlier case. However, the Board, relying in part on testimony presented by the Employer that its courier-guard position was identical throughout the country, found that the courier-guards employed at the Employer's Memphis, Tennessee, facility also were statutory guards.

The classifications of courier-guard is the most significant position within the Employer's northeast region, with which the instant proceeding is involved. Of approximately 570 employees in the region, more than 500 are courier-guards. The primary question presented here is whether the Petitioner has been able to distinguish the courier-guards it seeks to represent from those in the previous cases. We find that it has not.

As we found in those cases, the Employer's operation is designed to provide the secure, timely transportation of a wide variety of valuable commodities ranging from cash letters to controlled drugs and radioactive pharmaceuticals. All of the courier-guards are bonded and must undergo security clearance. They wear uniforms and make de-

³ The Petitioner, in four petitions, sought separate units at each of the four facilities mentioned above. At the hearing, however, the parties stipulated that the smallest appropriate unit, if any, is one that encompasses the Employer's northeast region, consisting of all the Employer's operations in New York State and the northern half of New Jersey.

liveries in vans which are clearly identified as "Purolator Courier" delivery vehicles. The courier-guards are given keys to obtain access to the locked premises and security vaults of a substantial number of the Employer's customers. They are held accountable for the safekeeping of packages in their vehicles and for taking precautions when entering or leaving customers' locked premises. In all these respects the functions, responsibility, and conditions of the courier-guards' employment are virtually identical with those of the courier-guards in the earlier cases. Such minor alleged differences as the instances in which courier-guards were hired before their security clearances or initial security training programs were completed, or in which they were permitted to drive without uniforms, do not change their status. As the basic function of these courier-guards involves, directly and substantially, the protection of valuable property of the Employer's customers, we conclude that they are guards within the meaning of Section 9(b)(3). *Purolator Courier Corp.*, *supra*, 254 NLRB at 600; 265 NLRB at 661.

The extensive hearing conducted herein also concerned the guard status of other employee classifications sought by the Petitioner. In fact, there is substantial question whether some of the employees in these classifications are statutory guards. However, having eliminated from any appropriate unit the major component of the Employer's work force, the courier-guards, we are not prepared to make a determination that some of these other employees constitute one or more appropriate units. For, although the Petitioner has indicated a willingness to accept alternative units, it has neither made a record nor provided a rationale for the establishment of any alternative unit or units. Thus, we conclude that there is no basis on which to find any appropriate unit in this proceeding. *American Broadcasting Company, A Division of American Broadcasting Companies, Inc.*, 210 NLRB 654 (1974). Accordingly, we shall dismiss the petitions herein.

ORDER

It is hereby ordered that the petitions filed herein be, and they hereby are, dismissed.